

House Study Bill 116

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the disposition of seized property in a
2 criminal proceeding.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1102DP 82
5 jm/es/88

PAG LIN

1 1 Section 1. Section 809.5, subsection 1, Code 2007, is
1 2 amended to read as follows:
1 3 1. Seized property which is no longer required as evidence
1 4 or for use in an investigation ~~may shall~~ be returned to the
1 5 owner ~~without the requirement of a hearing~~, provided that the
1 6 person's possession of the property is not prohibited by law
1 7 and there is no forfeiture claim filed on behalf of the state.
1 8 The seizing agency or prosecuting attorney shall send notice
1 9 by regular mail, if the value of the property is less than
1 10 ~~fifty five hundred~~ dollars, or ~~by~~ certified mail, if the value
1 11 of the property is equal to or greater than ~~fifty five hundred~~
1 12 dollars, to the last known address of any person having an
1 13 ownership or possessory right in the property stating that the
1 14 property ~~is released and~~ must be claimed within thirty days ~~of~~
1 15 ~~the mailing of the notice~~. Such notice shall state that if no
1 16 written claim for the property is ~~made upon~~ filed with the
1 17 seizing agency within thirty days after the mailing of notice,
1 18 the property shall be deemed abandoned and disposed of
1 19 accordingly. ~~In the event that there is more than one party~~
1 20 ~~who may assert a right to possession or ownership of the~~
1 21 ~~property, the~~ The seizing agency shall not release the
1 22 property to any party until the expiration of the date for
1 23 filing claims ~~unless all other claimants execute a written~~
1 24 ~~waiver~~. In the event that there is more than one claim filed
1 25 for the return of property under this section, at the
1 26 expiration of the period for filing claims the seizing agency
1 27 or prosecuting attorney shall file a copy of all such claims
1 28 with the clerk of court and the clerk shall proceed as if such
1 29 claims were filed by the parties under section 809.3. In the
1 30 event that no owner can be located or no claim is filed under
1 31 this section for property having a value of less than five
1 32 hundred dollars, the property shall be deemed abandoned and
1 33 the seizing agency shall become the owner of such property and
1 34 may dispose of it in any reasonable manner. For unclaimed
1 35 property having a value equal to or greater than five hundred
2 1 dollars, forfeiture proceedings shall be initiated pursuant to
2 2 the provisions of chapter 809A. If the court does not order
2 3 the property forfeited to the state in the forfeiture
2 4 proceedings pursuant to chapter 809A, the seizing agency shall
2 5 become the owner of the property and may dispose of it in any
2 6 reasonable manner. Unclaimed firearms and ammunition, if not
2 7 forfeited pursuant to chapter 809A, shall be disposed of by
2 8 the department of public safety or the department of natural
2 9 resources pursuant to section 809.21.

EXPLANATION

2 10 This bill relates to the disposition of seized property in
2 11 a criminal proceeding.
2 12 The bill eliminates the involvement of the prosecuting
2 13 attorney when sending claim notices to persons with possible
2 14 ownership interests in the seized property. Current law
2 15 permits the agency seizing the property or the prosecuting
2 16 attorney to send out claim notices to persons with possible
2 17 ownership interest in seized property.
2 18 Under the bill, if the value of the seized property is less
2 19

2 20 than \$500, the claim notice shall be sent by regular mail; if
2 21 the value of the seized property is equal to or greater than
2 22 \$500, the claim notice shall be sent by certified mail.

2 23 The bill provides that the seizing agency shall not release
2 24 the property to any party until the expiration date for filing
2 25 a claim of ownership for the seized property has expired.
2 26 Under current law, the seizing agency may release the seized
2 27 property prior to the expiration date for filing claims, if
2 28 all the claimants issue a written waiver to the property.

2 29 Under the bill, if a claim of ownership has not been timely
2 30 filed for seized property and the value of the seized property
2 31 is less than \$500, the seized property is deemed abandoned and
2 32 the seizing agency becomes the owner of the seized property
2 33 and may dispose of the property in a reasonable manner.

2 34 If a claim of ownership has not been timely filed for
2 35 seized property equal to or greater in value than \$500, the
3 1 bill provides that forfeiture proceedings pursuant to Code
3 2 chapter 809A shall be initiated to determine ownership of the
3 3 seized property. If forfeiture proceedings are initiated and
3 4 the property is forfeited, the ownership of the property vests
3 5 with the state pursuant to Code section 809A.16, subsection 4.
3 6 If the court does not order the property forfeited, ownership
3 7 vests with the seizing agency and the seizing agency may
3 8 dispose of the property in a reasonable manner.

3 9 Under the bill and in current law, forfeited property under
3 10 Code chapter 809A is to be delivered to the department of
3 11 justice and disposed of by the department pursuant to Code
3 12 section 809A.17.

3 13 The bill also provides that all unclaimed firearms and
3 14 ammunition, if not forfeited pursuant to Code chapter 809A,
3 15 shall be disposed of by the department of public safety or
3 16 department of natural resources as provided in Code section
3 17 809.21.

3 18 LSB 1102DP 82

3 19 jm:rj/es/88